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THE LATE SIR SHAH MAHOMED SULAIMAN

In the death of Sir Shah Mahomed Sulaiman India has lost one of her most distinguished sons in the realm of law as well as science. After a brilliant academic career he was called to the Bar in 1910 and within a short time he had the unique distinction of being appointed Judge of the Allahabad High Court at the very early age of 34. He became the Chief Justice of that Court in 1932 and was appointed Judge, Federal Court in 1937. The Allahabad Law Reports and the Federal Court Reports bear eloquent testimony to his great learning and profound scholarship. His work on the Bench had been characterised by thoroughness, subtlety and acute analysis. His attainments in the field of Mathematics and Science have elicited universal recognition. His zeal and devotion in their pursuit even when engrossed in legal work were truly remarkable. His contribution to the cause of Muslim education has been extensive and as Vice-Chancellor of the Aligarh University he has rendered yeoman service. It is indeed a matter for profound regret that a life so full of promise and so rich in achievements should have been prematurely cut off.

CIVIL LIBERTIES AND S. 144, CRIMINAL PROCEDURE CODE

BY V. B. RAJU, M.A., I.C.S.

The necessity for safeguarding and upholding constitutional, civil and religious liberties and the undesirability of vesting extensive powers in executive officers can be illustrated by three important cases. They are the Full Bench decisions of the Madras High Court in *Sundaram Chetti* v. *Queen*[1], *In re Viswanadha Rao*[2], and *Pir Gul Hassan* v. *Crown*[3].

S. 144, Criminal Procedure Code which vests extensive powers in the District Magistrate reads as follows :—

> " Where in the opinion of a District Magistrate or certain other Magistrates there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may by written order stating the material facts of the case . ... direct any person to abstain from a certain act .... if such Magistrate considers that such direction is likely to prevent or tends to prevent ...... danger to human life, health or safety or a disturbance of public tranquillity or a riot or an affray."

The effect of the Madras and Karachi decisions is to give very wide powers to Magistrates to interfere with civil liberties. It is only necessary for the Magistrate to say that he apprehends a disturbance of the public tranquillity or a riot or an affray to arm him with powers to suppress civil liberties and no court can go into the question, whether the opinion of the Magistrate is justified or not by the facts of the case.

I will now give some illustrations to show to what extreme lengths these two decided cases can be stretched.

A Hindu Social Reform League intends to hold a propaganda meeting to preach the desirability of introducing Divorce in the Hindu Law of Marriage. The Sanatanists or any other section of the Hindu community threaten a breach of the peace and make representations to the District Magistrate. And assuming that there was a genuine likelihood of breach of the peace, will the District Magistrate be justified in passing an order under S. 144, Criminal Procedure Code prohibiting the meeting?

Or, to take another illustration, if a section of the Muslims intend to organise a Pakistan meeting and the Hindus or any section of the Hindus threaten to break the peace, will the District Magistrate be justified in prohibiting the Pakistan meeting?

One more illustration would be sufficient to show to what absurdities we would be led to if the provisions of S. 144 Criminal Procedure Code are misapplied.

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1. I.L.R. 6 Mad. 203 (F.B.). 2. I.L.R. 51 Mad. 1006 (F.B.)
3. I.L.R. 1939 Kar. 751 (F.B.).

Will the District Magistrate be justified in prohibiting Church services if any section of the Muslim, or Hindu community takes it into their heads to threaten a serious disturbance of public tranquillity or a riot?

Further as the words in S. 144 are "in the opinion of a District Magistrate", the District Magistrate can act in an arbitrary manner and courts cannot go into the question whether there were grounds for that opinion. In the first illustration given above, a Sanatanist District Magistrate may prohibit the meeting to popularise Divorce among Hindus whereas a reformist District Magistrate may not.

The decisions in the Madras Full Bench cases and in *Pir Gul Hassan* v. *Crown*[1], rest on the ground that "the first duty of a Government is the preservation of life and property and to secure this power is conferred on its officers to interfere with even the ordinary rights of members of the community." Sir Charles Turner, C.J., at page 220 of I.L.R. 6 Mad. observed that there is "a distinction between rights which have a primary and rights which have a secondary claim to such protection as the Government can afford and where the Government cannot protect both classes of rights it may and it ought to abandon the latter to secure the former." But this is, with the greatest respect, an unacceptable method of reasoning. Government is assumed to be capable of protecting all classes of civil rights and not merely some. A Government which can protect only some rights and not others is not in reality a Government but only an apology for a Government.

In the Karachi case the learned District Magistrate addressed a letter to the Sub-Divisional Magistrate asking for information as to the Muslim public opinion with regard to the holding of the Luari Haj by the Pir of Luari—which was ultimately prohibited by an order under S. 144 Criminal Procedure Code—asking in particular whether orthodox Muslims consider the Luari Haj merely undesirable or definitely irreligious. The Sub-Divisional Magistrate replied on the same day stating that Muslim public opinion was very much against the holding of the Luari Haj and that even liberal-minded Muslims considered this Haj as very objectionable from the religious point of view. The letter concluded thus:—

"The result therefore is that Muslims consider this Haj which is held at Luari instead of at Mecca as 'batil' and definitely irreligious and they oppose it on the ground of the dictates of the Quaran more than on conventional grounds."

A few observations on this may be permitted. It is difficult to see why the question whether Luari Haj is "undesirable or definitely irreligious," should have been the subject of a report. This

1. I.L.R. 1939 Kar. 751 (F.B.).

case illustrates how Magistrates even with the best of intentions stray from the strict requirements of law. Even if the holding of Luari Haj is definitely undesirable and irreligious it should be permitted in the same way as a Hindu social reformers' meeting on Divorce. It would therefore be pardonable to assume that in coming to a decision whether there was a likelihood of breach of the peace the Sub-Divisional Magistrate took note to some extent at least considerations which should not have been considered, namely that the holding of Luari Haj was "definitely irreligious and opposed to the dictates of Quaran" to use the words of the Sub-Divisional Magistrate himself. The concluding part of the report of the Sub-Divisional Magistrate which has been quoted by Lobo, J., in his judgment merely states that Muslims consider Luari Haj as definitely irreligious and that Muslims oppose it on the ground of the dictates of Quaran. There is nothing in it to justify that there was a likelihood of a disturbance of the public tranquillity or a riot or an affray and that the only way of avoiding it was to pass an order under S. 144, Criminal Procedure Code, prohibiting the Luari Haj.

Assuming that there was a likelihood of disturbance of the public tranquillity, before an order can be passed under S. 144 Criminal Procedure Code prohibiting an act, it must be shown that that the only way of avoiding the breach of the peace would be by prohibiting the particular act. The special significance of the words, "There is sufficient ground for proceeding under this section" which are found in S. 144 Criminal Procedure Code, is not, it is submitted with the greatest respect, noticed in the Karachi decision.

The question of orders under S. 144 Criminal Procedure Code has also to be looked at from a different point of view. If the doing of an act is likely to lead to a breach of the peace by those opposing it the question will be whether the doing of the act is to be prohibited or the opposition to the doing of that Act. If the act in question is a peaceful exercise of a civil or religious liberty it is only the opposition to the act that is to be prohibited and not the peaceful exercise of a civil or religious liberty. Of course it may not be possible for the District Magistrate to speedily determine whether the act is a civil right or a civil wrong. In such cases he would be justified in prohibiting the act even if ultimately it turns out after an inquiry to be a civil right and not a civil wrong. In my view the significance of the words "sufficient ground for proceeding under this section" is that the District Magistrate has to be satisfied that the act is not a peaceful exercise of a civil or religious right or in the alternative that he has no time to decide that question. The District Magistrate has also to be satisfied that it is necessary to prohibit the doing of a particular act and not the opposition to it.

The passing of an order under S. 144 Criminal Procedure Code implies a power on the part of Government to enforce obedience to that order. If Government can enforce obedience to an order under S. 144 Criminal Procedure Code, it can equally well uphold constitutional, civil and religious rights. It will be dangerous to allow executive officers of Government to form the opinion that S. 144 Criminal Procedure Code allows Government officers to uphold only certain classes of rights and to suppress other classes of rights.

In *In re Viswanadha Rao*[1], which followed the earlier Madras case it was observed that "where there is a conflict between the public interest and a private right, the former must prevail." But I may be pardoned for the remark that it is in the interests of the public that private rights should be upheld.

Some recent decisions of the Madras High Court have expressed disagreement from the earlier Madras view. For instance, see *In re Devatha Sriramamurthy*.[2]

The view taken in 6 Mad., 51 Mad., and I.L.R. 1939, Karachi, can only be supported on the ground that in the preservation of the public peace it may be necessary to override temporarily private rights. These words are taken from the Full Bench judgment in 51 Mad. But the real importance of these observations is not, I am afraid, grasped by executive officers of Government.

In my humble view if a person intends to do an act which is a peaceful exercise of a civil or religious right and gives sufficient notice to the District Magistrate it would not be legal for the District Magistrate to pass an order under S. 144 Criminal Procedure Code directing him to abstain from the Act. For then having regard to the words "there is sufficient ground for proceeding under this section *and immediate prevention or speedy remedy is desirable*", in S. 144 Criminal Procedure Code, it would not be legal for a District Magistrate to refuse to use the authority of Government to uphold civil or religious rights and liberties. For similar reasons it would not be legal for a District Magistrate to repeat the prohibitory orders at regular annual or other periodic intervals. It is the duty of Government to govern and after the temporary emergency has passed the Government should arm itself with sufficient power to uphold civil rights. The significance of the words "it may be necessary for them to override temporarily private rights" is that private rights should not be overridden *permanently* by the repeated renewal of orders under S. 144 Criminal Procedure Code. This aspect of the matter does not appear to have been considered by executive authority nor has it been noticed in any of the reported cases. Executive authorities are apt to form the impression that because High Courts

1. I.L.R. 51 Mad. 1006, 2. (1930) 60 M.L.J. 370.

have upheld the legality of an order passed by them under S. 144 Criminal Procedure Code interfering with the exercise of a private right they are given an implied licence by the High Courts to renew the order under S. 144 Criminal Procedure Code from time to time whenever the exercise of the private right is again threatened. But this, it is submitted, would not be a correct view. An order passed under S. 144 Criminal Procedure Code overriding a private right may be legal and justified by S. 144 Criminal Procedure Code when issued for the first time in a temporary emergency. But the passing of the same order for a second time may not be legal or justified by S. 144 Criminal Procedure Code, if the authorities have sufficient notice of the intended exercise of private rights. What the Madras and Karachi courts have permitted is only a temporary interference with private rights. But it would be incorrect and dangerous to think that the decisions of these courts permit a permanent interference with private rights by the issue of periodical orders under S. 144 Criminal Procedure Code whenever the exercise of the private right is intended. If this be not the correct view then there would be a permanent premium on opposition to private civil rights and there would be an encouragement to those who wish to suppress all opposition to them.

If the view suggested in this article does not meet with judicial approval then there is a clear case for action on the part of the Legislature to amend S. 144 Criminal Procedure Code.

SUMMARY OF ENGLISH CASES

WOLSTANTON LTD., AND ATTORNEY-GENERAL OF DUCHY OF LANCASTER *v.* NEWCASTLE UNDER LYME CORPORATION, (1940) A.C. 860.

Easements—Collateral support—Right by custom to let down the surface of adjoining mine without compensation for damages—Validity.

Practice—Reservation of right to reconsider a decision—Not to be treated as suggesting the decision to be erroneous.

In a claim for an injunction to restrain the defendants from so working their mines as to let down the surface and thus damage the plaintiff's property the defence was that there was both a custom and a right by prescription to work their mine so as to let down the surface without liability to make compensation.

Held, that the custom was unreasonable and therefore unenforceable. *Hilton* v. *Granville*, (1844) 5 Q.B. 701 applied.

Prescription in common law resembled custom and was based on presumption of a lost grant and it is not necessary for those who allege a custom to show how it arose or might have arisen. . . .

Viscount Maugham.—Reservation by a Judge or a Lord of Appeal of the right to reconsider a decision cannot be taken as a statement that he thinks the decision was erroneous.

SEDLEIGH-DENFIELD *v.* ST. JOSEPH'S SOCIETY FOR FOREIGN MISSIONS, 1940 A.C. 880 (H.L.).

Nuisance—Private nuisance—Originating from act of trespasser—Liability of owner or occupier for " continuing " or " adopting " such nuisance.

Where an owner of property continues or adopts a nuisance created by a trespasser on such property, a person affected by it, is entitled to bring an action as and for continuation and adoption of such nuisance against the owner who does not choose to abate it.
Per *Viscount Maugham.*—An owner of land " continues a nuisance, if with a knowledge or presumed knowledge of its existence he fails to take reasonable means to bring it to an end though with ample time to do so. He " adopts " it if he makes any use of the erection, building, " bank or artificial continuance which constitutes the nuisance."

LEWIS *v.* DENYE, 1940 A.C. 921 (H.L.).

Tort—Contributory negligence—Effect—Dangerous machinery—Failure to fence—Laibility for injury.

An infant plaintiff who met with an accident while working on a circular saw in defendant's factory sued for damages on the footing of a breach of statutory duty by the defendant to securely fence the saw. It was found on the evidence that the plaintiff knew that he could have avoided all risks by using the proper apparatus and that he failed to take reasonable care and his omission so to do must have been the effective cause of the accident.

Held, the contributory negligence of the plaintiff disentitles him from succeeding. The question of the legal effect of a breach of statutory regulation was left open.

Decision of the Court of Appeal affirmed.

CANADIAN TRANSPORT CO. *v.* COURT LINE LTD., 1940 A.C. 934 (H.L.).

Charter Party—Charterer to stow under supervision of the captain—Liability for improper stowage—Club rule restraining assignment of ship-owner's insurer rights—Effect on charterer's right to get transfer.

Where a charter party provided that " charterers are to load, stow and trim the cargo at their expense under the supervision of the captain " it only entitles the master to interfere with the stowage for the limited purpose of protecting the ship from something which

would interfere with the seaworthiness. The liability for improper stowage is thrown on the charterers and not the shipowners. The charterer cannot claim against the shipowner (who is in a position to obtain indemnity against the liability from his club) a transfer of his rights as the Club Rules prohibited it.

Decision of the Court of Appeal affirmed.

WEAVER v. TREADGAR IRON AND COAL CO., LTD., 1940 A.C. 955 (H.L.).

Workmen's Compensation—Accident to workman while boarding a train at a private halt provided by his employer—Accident if one " out of and in the course of employment "—Tests.

After finishing his work at the colliery a workman proposed to return home by train. In order to catch the train he passed directly from the colliery to a private platform provided by the employer which was the only means of access from the colliery to the train and upon which he had no right to be except by virtue of his status as an employee of the colliery. In the press of workmen pushing their way he fell off the platform and his left arm was caught between two railway coaches. The arm had to be amputated above the elbow and the workman was totally disabled. In a claim for compensation,

Held (*Viscount Maugham* dissenting).—It was an accident arising out of and in the course of the employment and the workman was entitled to compensation.

SMITH HOGG & CO. v. BLACK SEA, ETC., CO., 1940 A.C. 997 (H.L.).

Shipping—Charter party—Unseaworthy condition of ship—Loss caused by—Owners if entitled to recover general average loss.

Where the dominant cause of the loss was the unseaworthy condition of the ship and that unseaworthiness was due to a lack of care on the part of the owners and the master to exercise due diligence the owners were not entitled to recover general average loss.

Decision of the Court of Appeal in (1939) 2 ALL.E.R. 855 affirmed.

NOKES v. DONCASTER COLLIERIES, LTD., 1940 A.C. 1014 (H.L.).

Companies—Companies Act, S. 154—Dissolution—Transfer of property, rights and liabilities to new company—If can include contract of personal service.

Held (*Lord Romer*, dissenting).—An order under the Companies Act, S. 154 transferring to a new company the property, rights and

liabilities of another company which was dissolved under S. 153 of the Act, does not automatically transfer to the new company contracts of personal service with the old company. Such rights are by law not transferable.

Per *Viscount Simon, L.C.*—A right to the service of an employee is not the property of the company.

(1939) 2 K.B. 578 (C.A.) reversed.

Re WILSON, (1940) 1 Ch. 966.

Wills—Legacies and annuities—Abatement—Rights of annuitant.

Where the estate of the testator is insufficient to pay in full the pecuniary legacies and the annuities which he had bequeathed, the annuities have to be valued and the values treated as legacies, and abated proportionately with the pecuniary legacies, and the annuitants are entitled to be paid the abated value of the annuities.

PARSONS *In re*: BARNSDALE AND SMALLMAN *v.* PARSONS, (1940) 1 Ch. 973; 4 All.E.R. 65 (Ch. D.)

Powers—Settlement conferring power to appoint new trustee—Exercise of power by infant—Validity.

A settlement provided *inter alia* that the power of appointing new trustees shall be vested in the settlor during his life and after his death in P his son. After the death of the settlor and the original trustee, P while still an infant purported to appoint his mother to be sole trustee of the settlement in the place of the deceased original trustee. On the question of the validity of the appointment,

Held, that as there was conflict between interest and duty in the position in which the mother was placed the appointment was invalid as prejudicial to the minor's interest.

LAWTON *In re*: LLOYDS BANK LTD. *v.* LONGFLEET ST. MARY'S PAROCHIAL CHURCH COUNCIL, (1940) 1 Ch. 984.

Will—Bequest to trustees of parish church for any purpose permitted by trust deed—Void for uncertainty where there was no trust or trust deed for the parish church.

A bequest was made to the trustees of a parish church to be used in their discretion for any purpose permitted by the trust deed. There being no such trust deed or trustees for the parish church,

Held, that there was no general charitable intention and the gift was void for uncertainty.

(1868) L.R. 6 Eq. 419 Followed.

ORAM *In re*: ORAM *v.* ORAM, (1940) 1 Ch. 1001; 2 All.E.R. 161 (Ch. D.)

Will—Trust for sale and conversion with power to postpone—Residue to be divided into two parts—Proper date for valuation.

A testator after devising various pecuniary legacies bequeathed all his real and personal estate to his trustees upon trust to sell the real estate and to sell, call in and convert into money so much of his personal estate as should not consist of money with a power to postpone, for so long as his trustees should think fit, the sale, calling in and conversion of any part of his real and personal estate. The clause also contained a declaration that the income of his personal estate shall from his death be treated as income. The will further provided that the residuary estate shall be held upon trust to be divided into two parts in such a way that the value of the one exceeded the other by £30,000 and each part was to be held in trust for a named person.

Held that the valuation of the estate was to be made as at the date of the testator's death when the estate was distributable.

GORMAN *v.* BARNARD AND ANOTHER, (1940) 2 K.B. 570 (C.A.).

Tort—False imprisonment—Steward of ship suspected to harbour uncustomed goods—Detention by customs officer—Liability—Customs Consolidation Act, (1876), *S.* 186.

S. 186 of the Customs Consolidation Act made it an offence for any person to knowingly harbour, keep or conceal any uncustomed goods and empowered the customs officer to detain the offender. Where a customs officer detained a ship's steward merely on suspicion that he was harbouring uncustomed goods but not in fact guilty of the offence,

Held [Per *Scott* and *Clauson, L.JJ.*, (*Mackinnon L.J.*, dissenting)]. that the person so detained is entitled to recover damages for false imprisonment. The statute empowers only detention of " offenders " and not suspects.

PARKER (HARRY) LTD. *v.* MASON, (1940) 2 K.B. 590; 4 All.E.R. 199 (C.A.)

Principal and agent—Principal if can recover money paid under illegal contract to agent not applied by him.

Where a principal advances money to his agent to be employed in street betting contrary to law and also for making a fictitious bet on the race course to keep up the odds on a particular horse, the principal cannot recover the money handed to the agent who dishonestly used the money to his own purposes. The court will not

assist either party once the illegality of the transaction is brought to its notice.

REX v. INLAND REVENUE COMMISSIONERS *Ex parte* GIBBS (1940) 2 K.B. 615 (C.A.).

Income-tax—Partnership taking an additional partner—Adjustment of assessment.

Where a fresh partnership is constituted by the taking of a new partner,

Held, [Reversing (1940) 2 K.B. 242] that the first partnership had not ceased to carry on a business and had not been succeeded therein by another and was assessable accordingly.

WOOD v. LONDON COUNTY COUNCIL, (1940) 2 K.B. 642; 4 All. E.R. 149.

Factories Act (1937)—*S.* 151, *Sub-Ss.* (1) (*a*) (*b*), 9—*Kitchen in a hospital run by public authority—If "factory"—Injury to kitchen maid while mincing meat—Failure to make dangerous machinery safe—Liability.*

Plaintiff, a kitchen maid in a hospital kitchen, was injured while mincing meat by reason of her hand being caught in the machine which was not safely fenced. In an action for damages,

Held, that the kitchen was a "factory" within the meaning of S. 151, sub-s. (1) of the Factories Act and the defendant ought to have safely fenced any dangerous machinery therein. Where premises belong to or are in the occupation of a public authority it is not necessary that the work carried on thereat should be carried on by way of trade or for purposes of gain.

COLLIER v. SUNDAY REFEREE PUBLISHING CO. LTD., (1940) 2 K.B. 647; 4 All.E.R. 234.

Contract of service for a term—Sale of business before expiry of term and vendee not requiring the services—Claim for damages.

Plaintiff entered into a contract of service with the defendants by which he was appointed sub-editor of a specific paper for a period of two years from 1-9-1938 to 31-8-1940. On 11-6-1939 the paper was sold to another company which dispensed with the services of the plaintiff. In a claim for damages for breach of contract,

Held that the sale of the newspaper operated as an improper dismissal of the plaintiff and that the plaintiff was entitled to damages upto the date when the broken contract would have expired. Normally a servant, so long as he continued to be paid the stipulated salary can have no legal complaint notwithstanding that owing to the action of the employer he was left with nothing to do.

Only in certain exceptional cases there is an obligation to provide work.

FRIIS *v.* PARAMOUNT BAGWASH CO., LTD. (NO. 2), (1940) 2 K.B. 654; 4 All.E.R. 72.

Practice—County Court—Examination of witness on commission—Costs—County Court rules, O. 48, r. 1.

In an action in a County Court no order was made as to costs of taking evidence of the defence witnesses on commission. On the ultimate dismissal of the action,

Held, that the defendant was entitled to the costs incurred by him in making an interlocutory application to the County Court in respect of the examination of his witnesses before an examiner and the costs of examining the witnesses.

WILLIAMSON *v.* THORNYCROFT AND CO., (1940) 2 K.B. 658.

Fatal Accidents Act—Negligence causing death—Widow of deceased dying before trial of action for damages—Effect on assessment of damages.

The courts in doing justice on questions of damages are entitled to take note of the events which have happened subsequent to the date at which the cause of action accrued as throwing light upon the reality of the case. Accordingly where in a suit under Lord Campbell's Act the widow of the deceased dies before trial the court cannot shut its eyes to the fact that one dependent had only a short tenure of life before her dependence was brought to an end. A comparatively small amount ought to be allowed for such deceased dependent.

MANSER *v.* MANSER, (1940) P. 224; 4 All.E.R. 238.

Divorce—Wife's petition for divorce based on presumption of husband's death—Decree nisi*—Husband found to be alive—Decree to be rescinded.*

On a wife's petition for divorce a decree *nisi* was passed on the presumption that the husband was dead. On an intervention by the King's Proctor for rescinding the decree on the ground that the husband was alive, it was contended for the petitioner that the presumption of death was a ground for divorce and the fact of death was not material.

Held, that there was good cause for rescinding the *decree nisi* and not to make it absolute. The proceedings cannot continue on the footing of the presumption of death of an individual who is admittedly alive.

JOTTINGS AND CUTTINGS

UNVEILING OF SIR P. S. SIVASWAMI AIYAR'S PORTRAIT.

It was a very pleasant function that was performed by Sir Lionel Leach, Chief Justice, when he unveiled on Friday, the 14th March, 1941, a portrait of Sir P. S. Sivaswami Aiyar, K.C.S.I., C.I.E., LL.D., at the premises of the Madras Advocates' Association.

In requesting the learned Chief Justice to unveil the portrait, Sir Alladi Krishnaswami Aiyar, the President of the Association said :-

"In requesting Your Lordship to unveil the portrait of an eminent lawyer and distinguished son of India I feel I shall be failing in my duty if I do not give expression to my feelings of esteem and regard for Sir Sivaswami Aiyar. When I joined the Bar in 1907, he was one of the prominent leaders and shortly afterwards was appointed Advocate-General. I had the privilege of instructing him in a few cases both here and in the mofussil and of even opposing him in one or two cases in the absence of my learned leader, the late P. R. Sundara Aiyar, and I can speak with some personal knowledge about Sir Sivaswami Aiyar's work at the Bar. His advocacy was marked by the same characteristics which singled him out in the different spheres of his varied public activity—a slow and deliberate manner, deep learning, a punctilious attention to the use of the correct expression, a thoroughness of preparation, and an unwillingness to be hustled into making quick and seemingly clever repartees or replies. He was loath to leave one point and take to another on an interrogation from the Bench. The steering must be along a planned route. A too quick Bench bent on a speedy disposal of a cause could not get very much out of him and he would resent an interruption from the opposite side calculated to interfere with the even tenor of his arguments.

He was appointed a Member of the Executive Council in the year 1912 and filled that high office until 1917. His career as a Member of the Council was marked by a high sense of public duty, and a thorough study of the knotty problems of administration, even if the study occasionally led to a certain delay in disposal which might not be quite to the liking of the routine administrator.

When he retired from the office of Executive Councillor, instead of yielding to the temptation of returning to the profession, of which he was such a distinguished ornament, he decided to devote himself to unostentatious public service, giving the benefit of his sage counsel and advice whenever the interests of the country demanded it, and to the study of the classics and literature. As a nominated member of the Indian Legislative Assembly he was regarded almost as an authority on military matters and was listened to with respect and attention by every section of the house. "The speech is the man" is

well illustrated in his public utterances. Every word of his is weighed ; there is no exaggerated emphasis on any point and there is no excursion into fields which have not been thoroughly explored. His apparently faltering manner on certain occasions is the best index of his most careful deliberation and his anxiety to use the right word appropriate to the occasion. Even at this age, whenever he is in doubt regarding the pronunciation of a word or the particular sense of any word or expression he takes care to consult the latest edition of the Oxford dictionary.

While deeply learned in the law, law is but a part of his attainments. He enjoys the companionship of the great masters of literature, English and Oriental. Hardly a day passes, I am told, when he does not read some passages of the Ramayana or the Maha Bharatha or Bhagavatha. He lives up to the Upanishadic ideal that all the great virtues of man—*tapas*, *rita*, etc.,—are promoted by *swadhyaya*, *i.e.*, perpetual study and devotion to culture. Even now he leads a most regular life. At a particular hour he is enjoying his walks ; at another hour he is in his prayer and is having his religious exercises, and at another hour he is at his study. His daily life is punctuated with an unexampled precision. There is no institution with which he is connected in regard to which he does not give his individual and personal attention. No detail, whether it is a matter connected with the arrangement of a class routine in the National Girl's School or with a building plan or it may even be the arrangement of seats in regard to a dinner, would escape his attention.

In the case of many people the mind ceases to grow after a particular age and maturity of judgment may be another name for sterility. He is the example of a true conservative wedded to progress. His nature, while deeply rooted in the traditions of Ancient India, is ever responsive to new impulses and currents of thought. It is interesting to note that his world tour coincided with his retirement from office. He was anxious to quench the thirst for seeing all the places and institutions which came within his wide reading. Few people know the extent of his public benefactions, and in his charities he has truly acted on the religious principle of the right hand not knowing what the left hand doth. While it is not easy to persuade him to give for causes in which he has no faith, it is well known that he has practically devoted all his wealth to public uses. The Thirukattupalli High School and the Mylapore Girls' School are standing examples of his generosity, and he never ceases to help Pundits of undoubted and genuine scholarship.

He takes a keen interest in education ; he was Vice-Chancellor both of the Madras and Benares Universities. He has almost a parental affection for the pupils that came under his wardship,

whether to-day a particular pupil occupies the position of a Judge in the Highest Court, whether he is occupying the position of a doyen at the Bar or whether the pupil is occupying a humbler position. By having this portrait of his on these walls, the Association is honouring itself. May God grant him a still longer life and may the profession continue to have the benefit of his sage counsel and advice.

With these few words I request Your Lordship to unveil his portrait."

The Hon. Sir Lionel Leach, the Chief Justice, in unveiling the portrait said :

"It has been my happy duty on a number of occasions to unveil either in this room or in the central corridor of the High Court, the portraits of distinguished members of the legal profession. It is my happy duty to-day to unveil the portrait of yet another distinguished member of our profession, the portrait of Sir P. S. Sivaswami Aiyar. The Madras Bar has produced many great men but none can be deemed to be more deserving of a niche in the hall of fame than Sir Sivaswami.

Sir Sivaswami was born on the 7th February, 1864 and was enrolled as a High Court Vakil before some of us had crawled out of the cradle and before many of you had even been thought of. His enrolment took place in 1885, when he was only 21 years of age. His career at the Bar was such that I can well imagine that it was a source of universal satisfaction when in 1907 he was appointed to the office of the Advocate-General and thus became the leader of the Madras Bar. Unfortunately, Sir Sivaswami had given up practice before I came to Madras, but I met him very soon after my arrival and I quickly understood why he is held in such universal esteem.

In a life of Lord Cave, who as you know became the Lord Chancellor of England, the following is said of him :—'It was accuracy of thought combined with great carefulness of speech that made Cave quietly successful. He gave the impression that his great anxiety was to avoid overstating his case and to win success for it simply on its intrinsic merits.'

From what I have gathered about his career at the Bar these words can be applied with equal truth to Sir Sivaswami. In spite of his quiet and retiring nature he was successful and in winning success he gained the confidence, respect and affection of the whole Bar, and the Bar is the most critical of all professions.

Throughout his career Sir Sivaswami has taken a great interest and played an important part in politics. He sat in the Madras Legislative Council from 1904 to 1907 as the representative

of the University of Madras. He was the first Indian to occupy that position. From 1912 to 1917 he was a Member of the Executive Council of this Presidency and it was during that period that His Majesty conferred upon him the honour of Knight Commander of the Order of the Star of India in recognition of his public work. He was the President of the second session of the National Liberal Federation held at Calcutta in 1919, and of the ninth session held at Akola in 1926. In 1924 he was nominated a member of the Indian Legislative Assembly.

He has always been of the Liberal school of thought. I am sure that I can say with the approval of you all, and without running the risk of being accused of entering into politics myself, that India owes a great deal to Sir Sivaswami for the part he has played and is still playing in the political field. The advice and help of one of such high principles and possessing such a sense of fairness and such a knowledge of affairs as Sir Sivaswami has, can only be of benefit to his fellow countrymen. It was the possession of these qualities which led to his being appointed a member of the Indian Delegation at the third session of the Assembly of the League of Nations at Geneva in 1922.

In a recent speech, Mr. T. R. Venkatarama Sastriar remarked that Sir Sivaswami's politics may be in the judgment of the present generation rather old-fashioned and blind to certain broad facts which have come into existence. I cannot imagine Sir Sivaswami being blind to the realities of any situation and to be old-fashioned does not mean to be wrong.

The following quotation from "As You Like It" may not be out of place here:—

"O good old man, how well in thee appears
The constant service of the antique world,
When service sweat for duty, not for meed!
Thou art not for the fashion of these times,
Where none will sweat but for promotion;
And having that, do choke their service up
Even with the having: it is not so with thee."

Promotion for Sir Sivaswami has never meant a slackening in his endeavours to serve his fellowmen.

His services in the administration of justice and in the political field do not make up the full account of what his countrymen owe to Sir Sivaswami. He has also played a great part in the sphere of education. In his early days he was a Professor of the Madras Law College. In the fulness of time he became the Vice-Chancellor of the University of Madras, the Vice-Chancellor of the Benares Hindu University and the President of the Sanskrit College

Committee, and he has added to his services to education by founding a High School.

Sir Sivaswami has now passed his 77th year, but in spite of his advanced years, he is active both in mind and body. We have all seen him when out on his daily walk and what an inspiration it is! Few of his age are blessed with the same fund of energy, mental and physical, as he possessed, but we can all profit by his example.

To achieve true success, ability and capacity for hard work must be coupled with integrity and a high sense of duty. Sir Sivaswami has combined all these qualities, and the result is that he is held in the greatest respect by every class and by every community. Men of his type are only too rare and it must be the fervent prayer of all that he may be with us for many years more.

The Association owes a deep debt of gratitude to Mr. Venkatarama Sastriar for the presentation of the portrait. I will now proceed to perform the pleasant duty which has fallen to my lot of unveiling the portrait of the Grand Old Man of Madras".

Law and Lawyers in Literature.—Readers of Sir Walter Scott's great novel, "Guy Mannering"—one of the best of the series—may recall that when Colonel Mannering went to consult Counsellor Playdell in Edinburgh he was shown into a room hung with a portrait or two by Jamieson, the Caledonion Vandyke, and surrounded with books, the best editions of the best authors, and in particular an admirable collection of the classics, as to which their fortunate owner said: "These are my tools of trade. A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some knowledge of these, he may venture to call himself an architect." Happily, law and literature have time and again been felicitously linked together, and even law treatises, usually reputed by the public as the acme of aridity, have been rendered literature in the real sense by the lucidity and even charm of their language as witness the writings of such distinguished lawyers as Sir Henry Maine, F. W. Maitland, and others.—*L.T., 1940, p. 260.*

Jocular References.—In "Love a la Mode," Charles Macklin gaily announced that "the law is a sort of hocus-pocus science, that smiles in your face while it picks your pocket; and the glorious uncertainty of it is of more use to the professors than the justice of it." In another and more recent collection of quotations, that by Sir Gurney Benham, is a short section headed "Forensic," which starts off with the cheerful statement that "the law of England is the greatest grievance of the nation, very expensive and dilatory," Bishop

Burnet being the author. Thus, law is represented by his dictum that "corporations have neither bodies to be punished nor souls to be damned: they therefore do as they like." Lord Westbury, the author of many caustic sayings, is represented by his description of a witness from the College of Arms as "a silly old man who did not understand even his silly old trade." The authorship of this, however, has also been fathered on Lord Chesterfield and Whately. More practical was Westbury's injunction to his coachman, when the horses got out of hand, "drive into something cheap."
L.T. 1940, p. 260.

Retired Judges and Further Service.—Occasionally, as we know, those who have retired from the Bench have responded to the call for further service, not only in presiding over public inquiries, but also in renewing their judicial work for which they were made eligible by certain comparatively recent statutes. Among those of the past who returned to the courts after having resigned was Lord Darling, who on two occasions came back to the courts to assist in clearing off arrears and seemed to enjoy having again to appear in his judicial robes. A more recent instance, however, of a retired judge returning to active service was seen recently in the House of Lords, which has been engaged in considering the question of damages awarded in respect of the death of a very young child by accident. So important did the House regard the question that instead of being constituted of five law lords as is the normal number sitting, it was decided that the appeal should be heard by seven, and one of the seven, it was interesting to note, was Lord Roche, who was a Lord of Appeal from 1935 to 1938, but who now came back to assist in the solution of the point in dispute. In his case no statutory authority was needed to entitle him to sit after having resigned, for, as a peer who has held high judicial office, he is entitled to sit if he thinks fit so to do. His resumption of work is, however, another instance of the readiness of our public men to share in work for which they have special qualifications.—*S.J., 1940, p. 637.*

Indexes and Their utility.—In a certain classic work it will be remembered that Sancho Panza invoked blessings on the head of him who invented sleep. Many of us would fain do the like for him who invented the index, that invaluable adjunct and key to the contents of a book, particularly if the book is a large one. Isaac Disraeli, the father of the better known Benjamin, said that he venerated the inventor of indexes; indeed he even went so far as to say that he knew not to whom to yield the preference—to Hippocrates, who was the first great anatomiser of the human body, or to

that unknown labourer in literature who first laid open the nerves and arteries of a book. As another enthusiast declared, "an ideal indexer needs high qualifications; but unlike the poet he is not born but made." So important did yet another regard the index that he went so far as to declare that any work which from the nature of its subject-matter ought to be provided with an index, but was issued without one should be deprived of the benefit of the Copyright Acts. Till now, however, Parliament has not seen fit to enact this drastic rule. A further tribute to the index, and a striking one, is furnished by the fact that some editions of Scott's novels are equipped with indexes which the present writer has found of great utility every now and again.—*L.T., 1940, p. 295.*

BOOK REVIEWS

SOHONI'S CODE OF CRIMINAL PROCEDURE, 14th Edition, by W. T. Sundararajan, Advocate, Madras High Court, Published by The New Book Company, 188-190 Hornby Road, Bombay: 1941, 1389 pages. Price Rs. 20.

Sohoni's treatise holds a prominent place among the Commentaries on the Criminal Procedure Code. The present edition has revised and brought up to 1941 the text as well as the case-law bearing on the code. Important decisions such as *Pakala Narayanaswami* v. *Emperor* I.L.R. 18 Pat. 234 (P.C.) on the construction of S. 162, Criminal Procedure Code, and its reaction on S. 27 of the Evidence Act and *Mathen* v. *District Magistrate, Trivandrum*, I.L.R. 1939 Mad. 744 (P.C.) holding that in any of the cases covered by S. 491 Criminal Procedure Code, the common law writ of *habeas corpus* cannot be issued have all been appropriately noticed. A distinctive feature of the treatise is the inclusion of the reports of the Racial Distinctions Committee, 1922, and the Select Committee on the Bill to amend the Criminal Procedure Code, 1922. The texts of the Charter Act and the Letters Patent, the Cattle Trespass Act, 1871, the Coroners Act, 1871, the Criminal Law (Amendment) Act, 1908, the European Vagrancy Act, 1874, the Indian Extradition Act, 1903, the Indian Oaths Act, 1873, the Police Act, 1861, the Police Act, 1888, the Prisoners Act, 1900, the Prisons Act, 1894, the Reformatory Schools Act, 1897, and the Whipping Act, 1909, together with useful notes thereon are set out in appendices. These are features that add considerably to the utility of the book. A lead on certain points might have added to the completeness of the work, such as for instance, on the question whether S. 439 (6) should be read subject to S. 423 (2), or whether in view of S. 497 (5) it will be competent to a Magistrate having seisin of a case to cancel the bail

granted to an accused by another Magistrate who had seisin of the case at an earlier stage, etc.

The present edition fully sustains the reputation of its predecessors. The notes given under each section are accurate and adequate. We have great pleasure in welcoming the publication which is sure to be of great help to all practising lawyers.

THE INDIAN SALE OF GOODS ACT, 1930 by Om Prakash Aggarwala, M.A., with a Foreword by Sir B. L. Mitter, Published by the Lahore Law Depot, Kachery Road, Lahore: 1941: 731 pages. Price Rs. 7-8-0.

A knowledge of the law relating to sale of goods is becoming increasingly necessary in view of the growth of commerce apace. The Indian Sale of Goods Act, 1930 which superseded the provisions of Ch. VII of the Indian Contract Act is based on the corresponding English Act. A good commentary therefore of the Indian Act explaining its various sections and indicating the points where the Indian law diverges from the English law together with the reasons therefor is certainly to be desired. Mr. Om Prakash has endeavoured in this book to supply that want. He has given an analysis of the sections under appropriate heads and sub-heads. There are as many as nine appendices setting out the English Sale of Goods Act, 1893, the Indian Contract Act, 1872, Ch. VII, the English Sale of Goods Act as adopted by some of the Colonies, the Report of the Special Committee, the Report of the Select Committe, the Indian Bills of Lading Act, 1856 etc., and these are bound to prove greatly helpful particularly to those engaged in business. The citation of cases, English and Indian, is fairly full and the notes to the sections are dependable. The book is moderately priced and will be useful to lawyers as well as merchants.

THE ARBITRATION ACT, 1940, by N. L. Gupta, with a Foreword by the Hon'ble Mr. Justice Braund, published by the Law Publishing House, 33 Sheocharan Lal Road, Allahabad: 1940: 306 pages. Price Rs. 5.

The modern law of arbitration is by no means simple and arbitrators as well as those that advice or seek arbitration should have a more than passing acquaintance with the law on that subject. The Indian Arbitration Act, 1940 contains that law mainly and the value of a reliable commentary on the several sections of the Act cannot be exaggerated. The author who is a member of the U. P. Civil Service has in this book explained the several provisions of the Act

in the light of decided cases and the Reports of the Select Committee and the Civil Justice Committee of 1925. The reproduction of these reports and the texts of the English Arbitration Acts of 1889 and 1934 and the Administration of Justice Act, 1920 in the appendices to the book is a commendable feature of the book. The commentaries on the sections are thorough and the citation of cases judicious, though one may wish that decisions like those in A.I.R. 1937 P.C. 274 regarding the effect of a reference the true import of which had not been understood by one of the parties thereto, and in I.L.R. (1938) 2 Cal. 349, regarding the finality of a reference on a specific question of law, had also come in for notice. The book is sure to prove a useful addition to the library of every lawyer.

THE LAW OF HUNDIS AND NEGOTIABLE INSTRUMENTS, by Chiranjivi Lal Agarwal, M.A., LL.B., 4th edition, 1941. Published by the University Book Agency, Kacheri Road, Lahore: 480 pages. Price Rs. 5-8-0.

The law relating to Negotiable Instruments is a fascinating subject of study and a knowledge thereof is almost indispensable to merchants as well as to lawyers. Mr. Agarwal as the University Lecturer in Commercial Law at the College of Commerce, Lahore, is specially fitted to write on the subject and that he has been able to place the fourth edition of his book on the market within a decade of the publication of the first edition testifies to the popularity of his book.

In addition to giving the text of the Negotiable Instruments Act and providing comments on its sections, the author has set out the texts of the English Bills of Exchange Act and certain other enactments. The principles of the English Law Merchant have been referred to wherever necessary for purposes of comparison and the law relating to Hundis has been separately expounded. On the question, whether a Provincial Legislature can while legislating in respect of money-lenders and money-lending enact laws affecting the rate of interest on Negotiable Instruments, the author merely remarks that " the question is not free from difficulty and we have to wait until we get an authoritative pronouncement of the Federal Court on the matter." It would surely have been more helpful, particularly when the question had been propounded, if the author had discussed the matter and given his own conclusions. Curiously enough there is no index of cases, nor does the citation of authorities follow any uniform principle, some citations giving the names of the parties as well as the reports while others mention the reports only. The book contains on the whole an excellent exposition of the subject and we can commend it to both lawyers and law students.

LAW RELATING TO COMPANY DIRECTORS IN INDIA, by H. R. Mehrotra, G.D.A., published by the Progressive Publishing Co., P. 35-B. Central Avenue, Calcutta: 1940: 274 pages. Price Rs. 8.

The book is almost a pioneer in the field in so far as it is specially written for Directors of Companies in India. It expounds the rights, powers, duties and liabilities of company directors as set forth in the Indian Companies Act, 1913 and the decisions of courts. The exposition is in a form calculated to appeal to businessmen and is couched in simple and intelligible phraseology. The author's classification of directors into Born Directors, Guinea-pig Directors, Fee Directors, Exalted Directors, and Real or Practical Directors is very apt. Wherever no rule dealing directly with a matter is to be found the author has not hesitated to state what the rule should be. Inclusion of such decisions as that in *Premila Devi* v. *People's Bank of Northern India*, [A.I.R. 1938 P.C. 284] explaining the circumstances under which alone ratification by the share-holders of an act *ultra vires* the directors but *intra vires* the company will be valid would have made the exposition more full. We are sure that the book will prove a practical and dependable handbook not merely for directors, managing agents and other company officers but to lawyers as well.

HOW TO FORM A COMPANY, by H. R. Mehrotra, G.D.A., published by the Progressive Publishing Co., Calcutta: 1940: 160 pages. Price Rs. 3.

In this book the author states the law and practice relating to the formation of companies under the provisions of the Indian Companies Act, 1913. He takes us step by step from the first glimmerings of the idea of promoting a company down to its actual incorporation by the issue of the necessary certificate. The principles are stated in a simple style eschewing technical jargon as far as possible and in a practical form. The book is bound to prove a useful guide to those contemplating the formation of companies.

THE LAW AND PRACTICE OF EXCESS PROFITS TAX IN INDIA, by Iyer and Manchanda, published by the Indian Law Agencies, Law Publishers, Krishna Nagar, Lahore: 1941: Price Rs. 5.

The book is intended to be an exhaustive commentary on the Excess Profits Act (XV of 1940). The subject is covered in ten chapters. The rules framed under the Act and the Forms prescribed are given as appendices. The enactment is born of war conditions and seeks to tax excess profits attributable to such conditions. The authors are already familiar to the legal public in connection with

their work on the Indian Income-tax Act and the book under review is intended to serve as a companion volume thereto. The provisions of the Excess Profits Tax Act are by no means simple to understand and the precise scope of the exemptions contemplated, deductions allowable in respect of depreciation, obsoloscence etc., of plants, machinery and other assets, the valuation and realisation of stocks bought at an inflated value are all matters which are sure to give rise to considerable difficulty as regards their practical application. The notes provided by the authors as well as the "practical examples" afforded will no doubt be helpful in this connection. Leading decisions, Indian and English, relating to the construction of terms and provisions in the Income-tax and other Acts have been cited wherever relevant to facilitate an understanding of similar terms and provisions in the Excess Profits Tax Act. We have great pleasure in commending the book to the legal public.

THE MADRAS AGRICULTURISTS' RELIEF ACT (IV OF 1938), published by Messers. Ramaswami Aiyangar and M. Narasimhachariar, Advocates, Chittoor. Price Re.1-8-0.

Though the book is coming a little late into the field after two years of the Act's coming into force, and after a number of small books have been published, we have no doubt that this book will be received with due respect and find a good sale in the market. The two advocates who have collaborated to bring out this book have spared no pains to collect all the cases decided under the Act and to group them under appropriate headings and one special feature is that in many cases the facts of the case have been fully set out in detail and relevant passages of the judgment extracted , so that it becomes easy for the reader to understand the case without searching for the report. A further feature of the book is that the authors have given the references to all the reports where a case is reported, instead of confining it to one report.

We hope that the book will be given a very good reception and that the first edition will soon be sold out, so that we may expect a second edition early with the case-law up-to-date again.

THE INDIAN SUCCESSION ACT by Nrisinhadas Basu (2nd Edition, 1941). Published by The Eastern Law House, 15, College Square, Calcutta. Price Rs. 12.

Mr. Basu's book on the Indian Succession Act is one of the leading treatises on that subject. The present edition has incorporated the latest amendments to the Act and the result of the judi-

cial decisions, English and Indian, down to July, 1940. The Succession Act is mainly based upon the English law of testamentary succession relating to personal property and it is with reference to that background that the provisions of the Act will have to be understood. To facilitate such understanding a reference to English decisions becomes essential except on matters where the Indian Act has marked a departure from the principles of English law. The author has therefore done well not merely in drawing pointed attention to the differences between English and Indian law wherever they exist but also in making profuse citations from English cases elucidating the scope of the various rules. In view of the comprehensive character of the book we wish that place had been found therein to include references to decisions like those in *Bahu Rani* v. *Rajender Baksh*, (1933) L.R. 60 I.A. 95 (P.C.) on joint tenancy among Hindus, and in *In the goods of McCankie*, (1940) 1 M.L.J. 264 on the scope of S. 241 of the Act.

The author has endeavoured to make the book self-contained and has set out the provisions in other enactments affecting succession. The inclusion of Model Forms and the Rules framed by the several High Courts constitute a highly helpful feature of the book. The notes provided under the sections are lucid and well arranged. We have great pleasure in welcoming the publication.

THE JOURNAL OF COMPARATIVE LEGISLATION AND INTERNATIONAL LAW, Third Series, Vol. XXII, Part IV.

To persons living far away from the theatre of war and the grim havoc that it is working from day to day it will be rather difficult to appreciate the conditions under which a Journal like the one under review comes to be published. The building in the Temple in which the Society of Comparative Legislation had chambers has been destroyed owing to enemy action and a portion of the records lost; nevertheless every effort has been made to bring out the November number of the Society's Journal as usual. The reputation which the Journal enjoys among the legal literature of the British Empire is high and well-known. The Journal constitutes almost the only bond of union in the realm of law between the members of the British Commonwealth and the U. S. A. and deals with a wide range of subjects covering business affairs, social questions and legal matters. It is therefore a matter for gratification that the Society's Journal continues to be published as before.